

United States District Court

for the
Western District of New York



United States of America

v.

Case No. 18-MJ-

5292

JAMES TRACY

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

(1) On or about August 4, 2018, and on or about August 18, 2018, in the County of Erie, in the Western District of New York, the defendant, JAMES TRACY, did knowingly employ, use, persuade, entice, and coerce a minor who was under the age of 18 years, to engage in sexually explicit conduct as defined in Title 18, United States Code, Section 2256(2), for the purpose of producing visual depictions of such conduct, using materials that have been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, and the visual depictions were transported and transmitted using any means and facility of interstate and foreign commerce and the visual depictions were transported and transmitted in and affecting interstate and foreign commerce, in violation of **Title 18, United States Code, Section 2251(a) and 2251(e)**; and

(2) On or about August 4, 2018, and on or about August 18, 2018, in the County of Erie, in the Western District of New York, the defendant, JAMES TRACY, did knowingly receive child pornography, as defined in Title 18, United States Code, Section 2256(8), that had been shipped and transported using any means and facility of interstate and foreign commerce, and that had been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, in violation of **Title 18, United States Code, Section 2252A(a)(2)(A) and 2252A(b)(1)**.


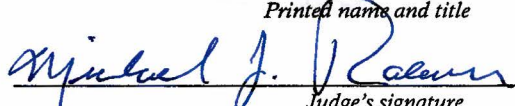
This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

Sworn to before me and signed in my presence.

Date: December 22, 2018

City and State: Buffalo, New York


Complainant's signature
JUSTIN J. BURNHAM
SPECIAL AGENT
HOMELAND SECURITY INVESTIGATIONS
Printed name and title

Judge's signature
MICHAEL J. ROEMER
UNITED STATES MAGISTRATE JUDGE
Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, **Justin J. Burnham**, being duly sworn, depose and state the following:

INTRODUCTION

1. I am a Special Agent with the Department of Homeland Security (DHS), Homeland Security Investigations (HSI), currently assigned to Buffalo, New York and have been so employed since October of 2008. I am currently assigned to the Buffalo Field Office of HSI and am assigned to the Child Exploitation Unit (CEU). As a member of the CEU, I investigate the sexual exploitation of children, including the production, distribution, receipt, and possession of child pornography, coercion/enticement, and the transfer of obscene material to minors in violation of Title 18, United States Code, Sections 2251, 2252, 2252A, 2422, and 1470. I have received specialized training in the area of child pornography, child exploitation, coercion/enticement, and I have had the opportunity to observe and review numerous examples of child pornography, as defined in Title 18, United States Code, Section 2256.

2. This affidavit is submitted in support of a criminal complaint charging JAMES TRACY with a violation of Title 18, United States Code, Sections 2251(a) and 2251(e) (Production of Child Pornography) and Title 18, United States Code, Sections 2252A(a)(2)(A) and 2252A(b)(1) (Receipt of Child Pornography).

3. The statements contained in this affidavit are based upon my investigation, information provided to me by other law enforcement personnel, and on my experience and training as a Special Agent of HSI.

BACKGROUND INFORMATION

4. On September 5, 2018, the New York State Police (NYSP) barracks in Jamestown, New York received information from a 15-year-old minor female, hereinafter referred to as the minor victim (MV), and her mother, regarding explicit messages the MV received over social media from James TRACY. The NYSP began an investigation into the allegations made by the MV and her mother, and eventually contacted Homeland Security Investigations (HSI) for assistance in the case. The mother indicated that the MV has access to social media, and the internet via a cellphone and tablet. On September 5, 2018, the parents retrieved the cell phone from the MV and reviewed the dialog on Facebook Messenger between the MV and TRACY, and discovered chat dialog including pictures of nude women sent from TRACY's Facebook account to the MV's Facebook account. After discovering these images, the MV's mother reported this information to the NYSP.

5. Previously, on June 21, 2000, TRACY was convicted of Attempted Sexual Abuse in the 1st degree, Contact by Forcible Compulsion, in violation of New York State Penal Law Section 130.65 subsection 1 for a crime against a minor by the Chautauqua County Court for which he was sentenced to a period of incarceration of one year.

REVIEW OF TRACY'S AND MV'S FACEBOOK ACCOUNT

6. HSI Special Agent Justin Burnham applied for, received, and served federal search warrants on TRACY's and the MV's Facebook accounts. During a review of the Facebook records, and the communications between TRACY's Facebook account and the MV's Facebook account, Agent Burnham discovered that TRACY repeatedly engaged the MV in sexual chat since at least May of 2018 and that TRACY requested naked pictures and videos of the MV which she then produced and sent to TRACY's Facebook account from her Facebook account while located in the Western District of New York. In addition, several naked photographs of women and photos of male genitalia were sent from TRACY's Facebook account to the MV's Facebook account.

7. During a chat dated August 4, 2018, TRACY provided the MV with three (3) Google Play cards in exchange for photos which depict, and meet the federal definition of, child pornography. The dialogue reveals that TRACY sent pictures and access codes for the three (3) Google Play cards, and in return, two nude photos, the second of which depicts the MV's genitalia, which meets the federal definition of child pornography, were sent from the MV's Facebook account to TRACY's Facebook account. After receiving the pictures, TRACY sent a message to the MV stating, "Wow sexy I want that" and later sent a message during that chat stating, "I'm so horny." During that same chat, dated August 4, 2018, TRACY sent an image of an adult male penis to the MV.

8. On August 13, 2018, TRACY sent a message to MV via Facebook which stated, "You got \$125 from me who does that" and "And all I got was 2 pics that I lost and

ya talked to me 1 time.” On August 14, 2018, a video was sent from the MV’s Facebook account to TRACY’s Facebook account which depicted the MV’s genitalia which meets the federal definition of child pornography. After receiving the video, TRACY replied, “Ok baby love you.”

9. On August 18, 2018, TRACY sent a message to the MV which stated, “Where’s the lower half of you?” In response, an image was sent from the MV’s Facebook account to TRACY’s Facebook account which depicted the MV’s genitalia and meets the federal definition of child pornography. Thereafter, a message was sent from TRACY’s Facebook account to the MV’s Facebook account stating, “I’m falling in love with you.”

10. On September 4, 2018, a video was sent from TRACY’s Facebook account to the MV’s Facebook account. The video depicted an adult male man naked from the waist down. The adult male appeared to be laying on a brown carpet inside a residence. During the video, the adult male uses his right hand to stroke his penis.

11. Throughout the conversations between TRACY and the MV, TRACY asked the MV to delete messages, pictures, and videos that are sent between them. On August 19, 2018, TRACY asked the MV, “You don’t show anyone what we say right,” and the MV replied, “nope.” The conversation continued and TRACY used his Facebook account to write to the MV, “Video sweetie”, “I wanna watch you rub and finger”, “I wanna rub my dick against your pussy”, and “Lick your clitty.” When the MV responded that she would not

send anything, TRACY messaged "You just don't wanna show me that sexy pussy". TRACY continues by telling the MV to delete images from her phone.

12. In September and November of 2018, the MV was interviewed by forensic interview specialists concerning this matter. The MV stated that TRACY asked for naked pictures and videos of the MV on Facebook. Several photographs which fit the definition of child pornography were presented to the MV during the interview and the MV identified herself as the subject of many of these photographs. When asked where she was located when she produced these images and videos the MV stated that she was in her home located in the Western District of New York.

13. On December 21, 2018, when TRACY was encountered by HSI agents, he admitted to engaging in oral sexual conduct with the MV on multiple occasions. Additionally, TRACY admitted to HSI agents that he touched the MV's genitals on at least thirty prior occasions.

CONCLUSION

14. Based upon the foregoing, the undersigned respectfully submits that there is probable cause to believe that JAMES TRACY did knowingly violate Title 18, United States

Code, Sections 2251(a) and 2251(e) (Production of Child Pornography) and Title 18, United States Code, Sections 2252A(a)(2)(A) and 2252A(b)(1) (Receipt of Child Pornography).


Justin Burnham
Special Agent
Homeland Security Investigations

Sworn to before me this 22nd
day of December 22, 2018.


HON. MICHAEL J. ROEMER
UNITED STATES MAGISTRATE JUDGE